

Calendar No. 536

78TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 528

RONALD A. COX

NOVEMBER 12, 1943.—Ordered to be printed

Mr. ROBERTSON, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 1933]

The Committee on Claims, to whom was referred the bill (H. R. 1933) for the relief of Ronald A. Cox, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in House Report No. 730, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report.

[H. Rept. No. 730, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 1933) for the relief of Ronald A. Cox, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

At the end of the bill, strike out the period and add: "*Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The purpose of the proposed legislation is to pay the sum of \$3,955 to Ronald A. Cox, of Emmett, Idaho, in full settlement of all claims against the United States for personal injuries and expenses incident thereto, sustained as a result of a collision between the motorcycle in which he was riding and a United States Army truck on the Kalaniana'ole Highway, Island of Oahu, T. H., on January 28, 1942.

STATEMENT OF FACTS

The facts are that on January 28, 1942, at about 2:30 p. m., an Army truck traveling in a convoy, operated by an enlisted man, was proceeding downgrade on the Kalanianaʻole Highway, Oahu, T. H. As it approached a very sharp curve at a speed of about 25 miles per hour, the driver attempted to apply the brakes, but his foot slipped from the brake pedal and struck the accelerator. The truck went out of control, swerved across the road and collided with the motorcycle owned and operated by Robert H. Gambling, Red Hill Camp, Oahu, and carrying Ronald Cox as a passenger, which was approaching from the opposite direction at a speed of about 30 miles per hour.

The War Department states in its report that the approximate cause of the accident was the negligence of the Army driver in permitting his foot to slip from the brake pedal and strike the accelerator when he attempted to apply the brakes, as a result of which he lost control of the vehicle; that neither Mr. Cox nor the operator of the motorcycle on which he was riding was contributorily negligent; and that Mr. Cox should be compensated for the injuries sustained by him.

According to the evidence of record, Mr. Cox has already incurred expenses amounting to \$484.45 for the treatment of his injuries, in addition to the sum of \$188.32 paid under the Honolulu Plantation Co.'s medical plan, will have further expense for the continuation of such treatment, and will suffer from a considerable, though at present unascertainable, degree of permanent disability. He has sustained a considerable loss of wages and his future earning power is seriously impaired.

The War Department considers the amount of \$3,955 a just and proper sum to pay Mr. Cox as compensation for his injuries. Therefore, your committee recommends favorable consideration of the bill, and append hereto the report from the War Department together with other pertinent evidence.

WAR DEPARTMENT,
Washington, D. C., June 1, 1943.

HON. DAN R. MCGEEHEE,
*Chairman, Committee on Claims,
House of Representatives.*

DEAR MR. MCGEEHEE: The War Department favors the enactment of H. R. 1933, Seventy-eighth Congress, a bill which would authorize and direct the Secretary of the Treasury to pay to Ronald A. Cox, Emmett, Idaho, the sum of \$3,955 in full settlement of all his claims against the United States on account of personal injuries sustained by him when the motorcycle on which he was riding was in collision with a United States Army truck.

On January 28, 1942, at about 2:30 p. m., an Army truck traveling in convoy, operated by an enlisted man, was proceeding downgrade on the Kalanianaʻole Highway, Oahu, T. H. As it approached a very sharp curve at a speed of about 25 miles per hour, the driver attempted to apply the brakes, but his foot slipped from the brake pedal and struck the accelerator. The truck went out of control, swerved across the road, and collided with a motorcycle owned and operated by Robert H. Gambling, Red Hill Camp, Oahu, and carrying Ronald Cox as a passenger, which was approaching from the opposite direction at a speed of about 30 miles per hour.

As a result of the accident, Mr. Cox sustained injuries which, in a statement dated March 25, 1942, by the commanding officer, Provisional Hospital No. 4, Kaneohe, T. H., are shown as follows:

1. Entry to hospital January 28, 1942, following motorcycle accident.

Diagnosis: (1) Fracture of left femur, (2) compound fracture left tibia and fibula, (3) compound fracture os calcis.

Treatment: Debridement and reduction of left tibia and fibula and os calcis followed by skeletal traction on femur. Open reduction of left femur, and March 9, 1942, left femur plated and left hip spica cast applied. Three blood transfusions.

Prognosis: Probably 9 months before cast can be removed; about 12 months before patient can return to work. Possible permanent disability of moderate degree in left leg.

2. In view of the expected prolonged convalescence and the patient's strong desire to return to his home on the mainland, I think it highly desirable to transfer him to the mainland at the earliest possible date.

A report dated March 27, 1942, by the chief of surgical service, Provisional Hospital No. 4, is as follows:

(2) Immediate operation: Debridement and reduction of compound fracture followed by application of plaster cast from toes to hip incorporating Kirschner wire in the os calcis and tibial tuberosity.

3. Progress following this operation as regards the lower leg was entirely satisfactory. On March 9, 1942, an open reduction on the femur was done, using a steel plate with six vitallium screws. The progress following this operation has also been entirely satisfactory.

Mr. Cox was transferred, on March 28, 1942, to the Aiea Hospital, from which he was discharged on March 30, 1942, to be placed on board a steamship for return to the mainland. He was last paid by his employers, Contractors, Pacific Naval Air Bases, to include January 27, 1942, the day before the accident, was on a nonpay status until March 30, 1942, when he drew travel pay until he disembarked at Oakland, Calif., on April 12, 1942. It appears that, although not required by their contract with Mr. Cox to assume such expenses, Contractors, Pacific Naval Air Bases, paid a bill of St. Marys Hospital, San Francisco, Calif., in the amount of \$83.50, and a bill of Dr. F. Justin McCarthy in the amount of \$47.25, for Mr. Cox's hospital and medical treatment, as well as \$215, the cost of transporting Mrs. Cox from Idaho to San Francisco, and returning both of them to their home in Idaho.

Mr. Cox was a member of the Honolulu Plantation Co's. medical plan, under the provisions of which his medical and hospital expenses up to the time of his departure from Honolulu were paid in the following amounts:

Territorial Hospital	\$103. 00
To hospital fund for subsistence	55. 82
To the Treasurer of the United States (for replacing medical supplies)	29. 50
Total	188. 32

On August 12, 1942, a claim was filed by him with the Contractors, Pacific Naval Air Bases, in the amount of \$3,780, upon the following basis:

"Prior to date of accident I was earning on an average of more than \$70 a week clear. From the date of accident until August 12, 1942, I could not do any work. This is a period of 28 weeks and multiplied by \$70 equals \$1,960 actual lost salary to date. It will be a minimum of at least 52 weeks before I can return to work as a miner. Until I can do such work again, I will be unable to earn on the average in excess of \$35 a week. This is a net loss per week of \$35 or for the year or \$1,820. This makes a total of actual lost salary to date, and approximate lost salary for the next 52 weeks, of \$3,780."

There is no record in the War Department of the action taken upon this claim but at the time of the accident Mr. Cox was not acting within the scope of his employment and it therefore appears unlikely that favorable action will be taken thereon.

After his arrival at his home in Emmett, Idaho, Mr. Cox was placed under the care of Dr. Fred A. Pittenger, Boise, Idaho, and Dr. C. E. Carver, Emmett, Idaho. Statements dated March 22, 1943, by Dr. Pittenger, are, in part, as follows:

"This is to certify that Mr. Ronald A. Cox is a regular patient of mine and has so been since November 20, 1942. He was operated on by me on November 25, 1942, at which time a vitallium plate was removed from the left femur, and also fragments of the right tibia were realigned. A vitallium plate was applied. There was quite a large amount of bone missing in the tibia so that he only had about one-third of the original bone. His leg was placed in a cast, and while we feel that union is taking place satisfactory, yet at the present time he has not sufficient union that he can bear any weight on this leg. At the present time he is in a leather-laced cast. His ankle is rigid, and movement of the knee is limited to about 50 percent. We are unable to state at this time what amount of permanent disability this man will have, but there will be some. He will have some shortening of the left leg. We are of the opinion that it will be 6 months before he will be surgically healed, and the amount of permanent disability can be stated.

"Ronald A. Cox, Emmett, Idaho, a patient of the undersigned for the purpose of receiving medical and surgical treatment required as a result of a leg injury, has an account with the undersigned amounting to date to the sum of \$182, of which nothing has been paid. This amount will be increased by further treatment; as to just the amount I am unable to state at this time."

It appears that the medical and hospital expenses for Mr. Cox's treatment as a result of the accident, March 22, 1943, other than those paid under the Honolulu Plantation Co.'s medical plan before his departure from Hawaii, are as follows:

Paid by Contractors, Pacific Naval Air Bases:		
St. Marys Hospital, San Francisco-----	\$83. 50	
Dr. F. Justin McCarthy-----	47. 25	
		\$130. 75
Paid or guaranteed by Morrison-Knudsen Co., Inc.:		
Dr. Fred A. Pittenger, Boise, Idaho-----	\$182. 00	
St. Alphonsus Hospital, Boise, Idaho-----	68. 70	
Joe D. Chester, Boise, Idaho (molded leather thigh brace)-	55. 00	
		305. 70
Paid by Mr. Cox: Dr. C. E. Carver, Emmett, Idaho-----		30. 00
Unpaid: Dr. C. E. Carver, Emmett, Idaho-----		18. 00
Total-----		484. 45

Under the terms of his contract with Contractors, Pacific Naval Air Bases, Mr. Cox was to be paid at the rate of \$1.10 per hour for an 8-hour day, 6 day per week; any work in excess of 8 hours per day for 6 days per week, or in excess of 8 hours per day, was to be paid for at the rate of one and one-half times the monthly rate divided by 200 hours. Mr. Cox states that immediately prior to the accident he was earning from \$75 to \$115 weekly, depending on the amount of overtime pay received; that his average earning expectancy for 1942 would have been at least \$400 per month; that such earnings could have been expected to continue through 1943 with the possibility of their increasing; that as a result of the enforced unemployment, the period of which, from the date of the accident to March 28, 1943, would total 14 months, his loss of income would be close to \$6,000. While he asserts that he has not been employed since the accident, it appears that, although disabled and obliged to walk with the aid of crutches, he has since August 15, 1942, been employed by Morrison-Knudsen Co., Inc., Boise, Idaho, for certain periods as a guard, for which services, up to November 13, 1942, he had received the total amount of \$371.05.

An affidavit dated March 22, 1943, by a representative of the Morrison-Knudsen Co., Inc., concerning the account of Mr. Cox with that company, is as follows:

"Authorization to advance sums of money to Ronald A. Cox, former employee of the Morrison-Knudsen Co., Inc., through the Contractors, Pacific Naval Air Bases, Post Office drawer F, Alameda, Calif., has been received in this office from Mr. Morrison. Records maintained in this office reveal the sum of \$341.70 already has been advanced, which sum is subject to repayment to the company by Mr. Cox when and if he is able to be gainfully reemployed.

"The sum of \$341.70 includes \$68.70 paid to the St. Alphonsus Hospital, Boise, Idaho, for hospitalization, and \$55 to Joe D. Chester, 600 Main Street, Boise, Idaho, for a molded leather thigh brace, making a total of \$123.70 for hospital and medical expenses.

"In addition the Morrison-Knudsen Co., Inc., has guaranteed the account of Mr. Cox with Dr. F. A. Pittenger, Boise, Idaho, which to date totals \$182. If paid to Dr. Pittenger by the company, it is expected that Mr. Cox will reimburse the company when and if he is able to be gainfully reemployed."

Mr. Cox was 26 years of age at the time of the accident. It appears that the only person dependent upon him for support is his wife, Lela Geraldyn Cox, age 25, of Emmet, who, Mr. Cox states, has not been employed since their marriage.

A claim filed with the War Department by Mr. Cox in an unstated amount for personal injuries was disapproved for the reason that there is no law or appropriation available to the War Department for the settlement of claims for personal injuries or expenses incident thereto resulting from accidents of this nature.

It is the view of the War Department that the proximate cause of the accident was the negligence of the Army driver in permitting his foot to slip from the brake pedal and strike the accelerator when he attempted to apply the brakes, as a result of which he lost control of the vehicle; that neither Mr. Cox nor the operator of the motorcycle on which he was riding was contributorily negligent; and that Mr. Cox should be compensated for the injuries sustained by him. According to the evidence of record, Mr. Cox has already incurred expenses amounting to \$484.45 for the treatment of his injuries, in addition to the sum of \$188.32 paid under the Honolulu Plantation Co.'s medical plan, will have further expense for the continuation of such treatment, and will suffer from a considerable, though at present unascertainable, degree of permanent disability. He has sustained a considerable loss of wages and his future earning power is seriously impaired.

Accordingly, the War Department does not consider that payment of the sum of \$3,955 is excessive, and recommends that the bill be enacted.

The fiscal effect of the bill is manifest.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

HENRY L. STIMSON, *Secretary of War.*

AFFIDAVIT BY RONALD A. COX

STATE OF IDAHO,
County of Gem, ss:

I, Ronald A Cox, being first duly sworn depose and say:

That I was born in Wabaunsee County, State of Kansas, on the 19th day of February, 1915; that I am married and have no dependents other than my wife; that my permanent address is 321 East Second Street, Emmett, Idaho. That on or about the year 1936 until on or about the month of November 1941, followed the mining trade and was predominately employed throughout all of said period of time in the mining industry. That on or about the 5th day of November 1941, I accepted employment as a chucktender or miner's helper, with the Contractors, Pacific Naval Air Bases, for their war projects at Red Hill, T. H. That on or about November 18, I sailed for Honolulu and went to work on said project at Red Hill on or about the 1st day of December, 1941. That on December 2, 1941, I was raised to first-class miner. That continuously from 2d day of December 1941, until the 27th day of January, 1942, I worked as a miner for said Contractors, Pacific Naval Air Bases, on the Red Hill project. That during all of this time my average weekly earnings were approximately \$70 per week, plus subsistence.

That on the 28th day of January 1942, a friend, Robert Howard Gambling, who also was working on said Red Hill project, and I took the day off for the purpose of taking a sight-seeing trip around the island of Oahu. We made the trip on a motorcycle and were riding tandem. At approximately 2:45 p. m. on said day, and at a time when my friend, Robert Howard Gambling, was driving we were traveling in the direction toward Pali and Honolulu from the town of Kailua. We were traveling on our own side of the center line of said highway at a lawful rate of speed of approximately 25 miles per hour. At this time we were approaching a rather sharp left-hand turn in said highway. A large group of Army trucks were rounding said turn traveling in an opposite direction—that is, traveling toward Kailua from the direction from the city of Honolulu. The first three of these trucks had rounded the turn and passed us. The fourth truck in the line was noticed by me just as it rounded the turn. It appeared to be driving at approximately 25 miles an hour. When I first noticed it, it was approximately astraddle the center line of the highway. It was swerving toward its left or in our direction and our side of the road. It appeared to be out of the control of the driver. Gambling, who was then driving the motorcycle, swerved sharply to our right, but the truck continued to swerve to its left and collided with us, throwing each of us from the motorcycle and seriously injuring me in the manner hereinafter stated.

My injuries consisted of the following: Inconsequential cuts and bruises; left leg broken above the knee; left leg shattered below the knee; left ankle and foot crushed.

Shortly after the time of the accident the said Robert Howard Gambling and I were taken in another Army truck to the Provisional Hospital, No. 4, in Kaneohe. I received such treatment there as was recommended by the medical officer in charge. The officer and doctors who treated me stated that it would be many months before I could return to work, and I made a request of the officials of Contractors, Pacific Naval Air Bases that I be returned to the mainland. This request was granted and I was placed on the boat and eventually docked at San Francisco on or about the 15th day of April 1942, and was placed in St. Marys Hospital in San Francisco where I remained over 3 weeks. Thereafter, I returned to my home in Emmett, Idaho, where I have since resided except for the brief period of time hereinafter mentioned.

During a portion of the period of time that I resided in Emmett after said accident, I was treated by Dr. C. E. Carver. My injuries were apparently healing satisfactorily although slowly, and on or about the 7th day of August, the solid cast was removed from my leg and replaced with a walking case. From that time on, I was able to walk with the aid of crutches and to do some work. On or about the 12th day of August 1942, Morrison-Knudsen Co. of Boise, Idaho, one of the

contractors of the group known as Contractors, Pacific Naval Air Bases, offered me employment as a flagman and watchman. I worked at this job from that date until approximately the 1st of November 1942 and during this time earned approximately \$5 per working day, or an average of between \$30 and \$35 a week. On or about the 1st of November 1942, this work terminated and I again returned to my home in Emmett, Idaho. On the 12th day of November 1942 and at a time when I still was walking with the aid of crutches, I visited a grocery store in Payette, Idaho. My crutch slipped and I fell again injuring my left leg below the knee. As a result of this second injury, I paid a professional visit to Dr. Fred A. Pittenger of Boise, and he advised me that there never had been a proper union of the tibia. He recommended an operation by which would be removed the bone plate from the left femur and the placement of bone plate and bone graft on the left tibia. He stated that unless this was done there never would be a proper union of the left tibia. Acting on this advice, I went to the St. Alphonsus Hospital on the 23d day of November 1942 and remained there until the 30th day of November 1942, and during this period of time had the operation and treatment recommended by the said Dr. Pittenger.

On the 12th day of August 1942, I filed a claim in the sum of \$3,780 against the United States Army. This claim was forwarded to Honolulu to the officials of Contractors, Pacific Naval Air Bases for presentation. I also had correspondence with the Honorable Compton I. White, United States Representative from Idaho, and by letter dated September 4, 1942, was advised by the said Representative White that my claim had been denied by the War Department in Washington, D. C.

In determining the amount of this claim, I tried to establish an equitable sum as based on loss of earnings and made my calculations in the following manner:

1. During my period of employment at Red Hill, I earned on the average of \$70 a week and I had every expectation of continuing to earn that sum for an indefinite period of time and until the job was completed or my services no longer needed.

2. From the 28th day of January 1942 until on or about the 12th day of August 1942 I was unable to perform any labor. This is a period of 28 weeks and based on my average earnings of \$70 a week, represents a loss of earnings for that period of \$1,960.

On August 12, the date upon which I filed said claim, it was estimated that it would be a minimum of 52 weeks before I could return to arduous labor such as that done by me on the project at Red Hill, and that during this period of 52 weeks, I would not be able to perform any work which would pay me in excess of an average of \$35 per week. This would result in a net loss of earnings of at least \$35 per week or for the period of 52 weeks, a total sum of \$1,820.

3. The combination of these two sums is \$3,780 or the amount of the claim filed by me and which was denied by the War Department.

The claim as described above was filed at the time aforesaid when it appeared that I reasonably could expect to do light work continuously until July or August, 1943, and thereafter could do arduous labor. As a result of the improper healing of the break below my knee and the second accident above described, it is now apparent that I will be unable to do any work before June or July of 1943, and it will be November or December of 1943 before I can return to heavy labor. This will augment my loss by a sum to be determined by the method used and above described in determining the amount of the claim above referred to. In addition to this loss, I also will have some medical and doctor and hospital bills in connection with the second accident in the approximate sum of \$175.

Dated this 10th day of December 1942.

RONALD A. COX.

Subscribed and sworn to before me this 10th day of December, 1942.

[SEAL]

MARGARET SMOKE,
Notary Public for Idaho residing in Emmett, Idaho.

My commission expires October 13, 1944.

AFFIDAVIT OF ROBERT H. GAMBLING

OCTOBER 19, 1942.

I, Robert H. Gambling, with passenger, Ronald Cox, was traveling on the highway between Kailua and the Pali on my motorcycle at about 3 p. m. on January 28, 1942. We were riding on our own side of the road at the speed of less than 25 miles per hour.

Coming in the opposite direction were several Army trucks. The second or third truck was straddling the white line when I first saw it coming around the curve in front of me. The truck apparently was out of control because he continued across the road. I turned my machine further to the right and was on or very close to the gravel on my own side of the road when we collided. The truck sideswiped the motorcycle causing about \$25 damage to the machine. It then continued over the bank. The truck driver and his passengers all jumped out and the truck was demolished.

When the truck hit us Cox and I apparently went over the left fender and landed in a pile. We were both hurt very seriously and were taken in another Army truck to the hospital.

The driver of the Army truck said that his shoes were slick and when he stepped on the brake his foot slipped off and hit the gas pedal. When the throttle opened the truck lurched ahead causing him to loose his hold on the steering wheel.

I, Robert H. Gambling, do hereby solemnly swear that the statements above are the truth to the best of my knowledge, so help me God.

ROBERT H. GAMBLING.

Subscribed and sworn to before me this 20th day of October 1942.

MARTHA M. MAIER,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires on June 30, 1945.

STATEMENT OF ARTHUR LUM, FORMER MOTOR PATROLMAN FOR THE HONOLULU POLICE DEPARTMENT STATIONED AT KANEOHE, DISTRICT NO. 4, IN REGARD TO ACCIDENT CASE OF RONALD COX

About 3:20 p. m. on the 28th of January 1942, I arrived at an accident scene on the Kalaniana'ole Highway, Kailua, Oahu, T. H. At the scene about 3:30, Lieutenant Barringer detailed me to locate two injured people from the accident. Checking for the injured parties at the first-aid stations, I finally located them at the Territorial Hospital in Kaneohe.

Robert Howard Gambling, 27 years old, miner at Red Hill, was operator of Harley Davidson Motorcycle No. 773. He stated that he was traveling from Kailua toward the Pali at about 25 miles per hour on his right side of the road, when an Army truck came around the bend directly at him and caused an accident. Ronald Cox, 26 years old, a miner at Red Hill, was riding tandem with Gambling on the same motorcycle when the accident occurred. He stated that they were traveling about 15 miles per hour uphill when the Army truck came around the bend and went right at them.

Cox had received compound fracture of the left leg below the knee and was operated on at the spot by Dr. Crawley and Dr. Murray of the Army. Gambling was sent to the Queen's Hospital. He had contusion above the left ankle, hip injury, abrasion of the left elbow, and possible internal injuries.

At no time did I have conversation with the operator and/or riders of the Army vehicle.

ARTHUR LUM.

Subscribed and sworn to before me at Honolulu, T. H., November 13, 1942.

Lietenant Commander, United States Navy.

Notarial powers conferred by act of Congress of the United States of April 25, 1935 (49 Stat. 161).

STATEMENT OF SGT. K. C. SAM OF HONOLULU POLICE DEPARTMENT, RE TRAFFIC CASUALTY, DISTRICT 4, No. 13725

On the 28th day of January, A. D. 1942, while I was patrolling on the highway at Kaneohe, Station KHAB, the Kaneohe police station, broadcasted that there was an automobile accident on the Kalaniana'ole Highway on the Kailua side of the Kalaniana'ole-Kaneohe cut-off junction. The broadcast was received by me at 2:45 p. m. and about 10 minutes later at 2:55 p. m. I arrived at the scene of the accident which is at the second curve on the Kailua side of the Kalaniana'ole

Highway-Kaneohe cut-off junction which is about one-quarter mile away from the office of the Kaneohe Ranch Co., Ltd.

When I arrived at the scene of the accident Officer Herbert K. Hoapili was already at the scene of the accident.

At the scene of the accident I interviewed one Herbert H. Kawamoto, age 25, of Company A, Two Hundred Ninety-eighth Infantry, dressed in United States Army uniform. He informed me that he was driving Dodge Truck No. 119, Two Hundred Ninety-eighth Infantry, on the Kalanianaʻole Highway and was heading toward Kailua from the Kalanianaʻole Highway-Kaneohe cut-off junction while on war duty when he lost control of the truck causing the car to crash the wooden fence on the left side of the highway heading toward Kailua and then tumbled down to the bottom of the gulch about 200 feet below the highway. At the scene of the accident we found a motorcycle, Harley Davidson, license No. 773, 1941 plates. The said motorcycle was on the makai or ocean side of the highway. According to informations obtained at the scene the motorcycle was proceeding in the opposite direction when the Army truck operated by Kawamoto crashed into said motorcycle. The operator of the motorcycle Robert Howard Gambling of Red Hill and Ronald Cox also of Red Hill who was riding with Gambling were not at the scene when I arrived. They both had been injured and were taken to the Territorial Hospital for first-aid treatment. The hospital end was investigated by Officer Arthur Lum who had submitted his report of his investigation in this traffic casualty case.

When I interviewed Herbert H. Kawamoto at the scene of the accident, he was pretty badly shaken up and he could hardly talk. He said he was driving about 25 miles per hour when he reached the scene of the accident and he was in third gear and shifted into fourth gear when he started to lose control of the car. He stated he lost control of the car, he jammed on his brakes but the car left the highway on the left side, causing the car to crash through the city and county fence. He stated after crashing through the fence the truck was at the edge of the gulch ready to tumble to the bottom. He stated weight of the occupants of the car held the car back from tumbling to the bottom of the gulch and when the occupants and he left the truck at the edge of the gulch the truck tumbled to the bottom of the gulch.

At the scene Officer Herbert K. Hoapili assisted me in taking the measurements. A section of the wooden fence 24 feet in length was smashed down by the Army truck, the telephone wires strung up along the side of the highway were also broken by the said truck. The Army truck was rounding a right curve when it ran off the left side of the highway. The curve is quite a sharp curve and if excessive speed is used in traveling over that section of the highway the car has a tendency to travel on the left.

At the time of the investigation at the scene, Captain Steenrud, of the Two Hundred and Ninety-eighth Infantry, represented the United States Army. The occupants of the truck operated by Herbert H. Kawamoto gave me their names as follows: Pvt. (1st cl.) William Kawapui, 25; Pvt. George Dewa, 24; Pvt. Raymond Ching, 22; and Pvt. Hiroshi Nagaoka, 25, all of the same outfit as Kawamoto.

The above statement was made by me at the request of Jimmy Laing of K. C. S., Contractors, Pacific Naval Air Bases, Pearl Harbor.

K. C. SAM.

Subscribed and sworn to before me this 19th day of October 1942.

D. S. C. LIU,

Notary Public, First Judicial Circuit, Territory of Hawaii.

BOISE, IDAHO, December 3, 1942.

To Whom It May Concern:

This is to certify that Mr. R. A. Cox, of 321 East Second Street, Emmett, Idaho, was examined by me on November 20, 1942, at the instigation of Morrison-Knudsen Co. Examination was to determine what the present status of Mr. Cox's injuries were, said injuries occurring on the 28th day of January 1942, while he was in the employment of the Pacific Naval Air Bases at Honolulu.

The history Mr. Cox gave me was that he was hit by an Army truck which sideswiped his motorcycle as he was riding along and caused him to sustain a compound fracture of the tibia and fibula of the left leg and a fracture of the left femur. He was cared for in Honolulu, at which time the left femur was plated and the left leg was put in a cast. Mr. Cox had been under treatment from the date

of his injury until the day of my examination. He stated on the 12th day of November 1942, he slipped on an oil floor while in the Safeway store at Payette, Idaho. While the force was not sufficient under ordinary circumstances to cause any injury at that time, he felt severe pain in his left leg.

Physical examination revealed swelling and tenderness, which is marked, on anterior surface of the left leg; there is a decided deformity of the tibia of the left leg; movement of any type is very painful. Regarding the fracture of the femur there is no tenderness or pain, but quite a large callus can be felt.

X-rays taken in the office on November 20, 1942 showed excellent union and alinement of the femur. There is a six-hole steel plate in the femur; the screws protruded through the opposite side of the femur. The leg, that is, the tibia showed a nonunion. There was no evidence of bone callus; there is osteoporosis of the lower end of the tibia and the bones of the foot due to nonuse.

An operation was suggested to Mr. Cox for the removal of the plate and application of some type of fixation. This was consented to, and this man was hospitalized at St. Alphonsus Hospital on November 23, 1942, and was operated on November 25, 1942, at which time the plate was removed from the femur. Examination showed excellent union and good alinement. An incision was made over the fibula; this union was broken, and a second incision was made over the tibia; a small portion of the anterior part of the tibia was missing; the union of the tibia was entirely fibrous; there was no attempt at callus formation or bony union; there was considerable scar tissue between the ends of the fragments; there was also a sequestra present; this was removed at this time; the end of the bone was scarified; the scar tissue was resected; the bone was trimmed; the fragments were approximated; a six-hole vitallium plate was applied; and the leg was put in a plaster cast. Mr. Cox remained in the hospital for about 5 days and then returned to his home.

In my judgement this man will not be able to get a union of sufficient use that he may do any sort of labor for at least 6 months, and the condition of his foot and leg will not permit his returning to arduous labor for 9 to 12 months, that is, he will not be able to return to his occupation which is that of miner.

I am rather of the opinion that, from the length of time it has been necessary for this man to be kept in a plaster cast, that he will have a permanently disabling ankle, that is, that the flexion and extension of this joint will be markedly interfered with.

FRED A. PITTINGER, M. D.

Subscribed and sworn to before me this 4th day of December 1942, at Boise, Idaho.

ANNA M. POPE, Notary Public.

ONE HUNDREDTH INFANTRY BATTALION (SEPARATE),
Camp McCoy, Wis., December 26, 1942.

Pvt. Hitoshi Nagaoka (30101069), Company B, One Hundredth Infantry Battalion (Separate), being duly sworn, deposes and says:

"About a year ago, exact date not known, I was in a weapon carrier driven by Pvt. Herbert H. Kawamoto. We were a part of the mobile force of the Two Hundred and Ninety-eighth Infantry and were on a mission ordered by regimental headquarters. Our commanding officer on this mission was Lt. Manase Makekau, who was substituting temporarily for our regular commander, Lt. Frank Butterfield. Our truck was second in the convoy and followed Lieutenant Makekau's car. On a bad curve a short distance below the junction of the Kaliahale Highway with the Kaneohe cut-off our car was unable to make the curve. This is a blind curve with a steep, high bank on the right and a steep slope on the left. The curve is very sharp to the right. Kawamoto was not an experienced driver. When we swerved to the left of the road we hit a motorcycle driven by Mr. Cox and carrying a passenger. Mr. Cox was on his side of the road, and I cannot blame him in any way for this accident. I do not think that Kawamoto was to blame, as he was following his leader in convoy, and being an inexperienced driver, was unable to make a very difficult curve."

HITOSHI NAGAOKA,

Private, Company B, One Hundredth Infantry Battalion (Separate).

Sworn to and subscribed before me this 28th day of December 1942.

JOHN M. TANIMURA,

Captain, One Hundredth Infantry Battalion (Separate), Adjutant.

ONE HUNDREDTH INFANTRY BATTALION (SEPARATE),
Camp McCoy, Wis., December 26, 1942.

Pvt. (1st cl.) George Dewa (30100327), Company B, One Hundredth Infantry Battalion (Separate) being duly sworn, deposes and says:

"I was on a half-ton weapon carrier involved in a collision on the Pali Road on the kaiua side of the Kalaniana'ole Highway Kaneohe cut-off. The driver of the truck was Pvt. Herbert Kawamoto. The road curves very sharply to the right. Kawamoto was not an experienced driver and had just received his G. I. driver's license a few days before the accident. Our vehicle was the second one in a convoy led by Lt. Manase Makekau, Two Hundred Ninety-eighth Infantry. The convoy composed the so-called mobile force of the Two Hundred Ninety-eighth Infantry. In my opinion we were traveling between 25 and 30 miles per hour. We swerved to the left side of the road and struck a motorcycle operated by a man we later learned to be Mr. Cox who had another man with him riding tandem. We continued on to the edge of the road, and crashed through the wooden fence there. Along with the other occupants of the truck I saved my life by jumping out before the truck continued down the hill about 200 feet. In my opinion the accident was not the fault of Mr. Cox, but was caused by (a) too much speed in the convoy, not the fault of the driver of our vehicle, (b) uncertain control by our driver due to lack of experience.

"We were on a tactical mission for the regiment at the time of the collision. The balance of the convoy did not stop."

GEORGE DEWA,
Private First Class, Company B, One Hundredth
Infantry Battalion (Separate).

Sworn to and subscribed before me this 28th day of December 1942.

JOHN M. TANIMURA,
Captain, One Hundredth Infantry Battalion (Separate), Adjutant.

HEADQUARTERS, ONE-HUNDREDTH INFANTRY BATTALION (SEPARATE),
Camp McCoy, Wis., December 26, 1942.

PACIFIC NAVAL AIR BASES,
Employment Office, Box 1518, Boise, Idaho.
(Attention: Mr. J. F. Cromwell.)

DEAR SIR: I have just received your letter of December 23 addressed to the commanding officer of this station.

It happens that Major Lovell, now here with this battalion, and I well remember the accident in question, wherein a Mr. Cox was badly injured in a collision between his motorcycle and a half-ton weapons carrier operated by Pvt. Herbert Kawamoto of the Two Hundred and Ninety-eighth Infantry. At the time I was executive officer of that regiment and Major Lovell (then a captain) was its adjutant. Our regimental command post was located within less than half a mile of the scene of the accident. I was talking over the phone to the commanding officer of one of our battalions when the truck crashed through and severed several telephone lines, ending the conversation very abruptly. We were in the midst of a tactical exercise at the time and the truck in question was operated as a carrier for a machine gun operated by our so-called mobile force, a small fast-hitting group. I am reasonably familiar with the facts of the case as I was at the scene of the accident very shortly after it occurred.

Our driver was inexperienced, which is quite understandable for that particular time, shortly after the war began. The explanation given me shortly afterward to the effect that he had been on a hike just before taking the truck, this hike mostly on dry grass and causing the soles of his shoes to be very slippery, further causing his foot to slip off the brake and on to the accelerator, is quite logical and entirely credible.

I spoke to Cox at the Kaneohe Hospital some time after the accident and learned that he was without funds and that to the best of his knowledge he was not covered by insurance.

I have signed an affidavit with Major Lovell, but in the interest of helping Mr. Cox will also sign this before our adjutant who is authorized to administer oaths.

Pvt. Herbert Kawamoto is not any longer with this battalion. I am forwarding your letter to his new commanding officer and will request that an affidavit be sent you from his new station.

Very truly yours,

FARRANT L. TURNER,
Lieutenant Colonel, One Hundredth Infantry Battalion (Separate), Commanding.

All statements made above are true to the best of my knowledge and belief.

FARRANT L. TURNER,
*Lieutenant Colonel, Infantry, Commanding,
One Hundredth Infantry Battalion (Separate).*

Sworn to and subscribed before me this 28th day of December 1942.

JOHN M. TANIMURA,
Captain, One Hundredth Infantry Battalion (Separate), Adjutant.

ONE HUNDREDTH INFANTRY BATTALION (SEPARATE),
Camp McCoy, Wis., December 26, 1942.

Lt. Col. Farrant L. Turner, commanding officer, and Maj. James W. Lovell, executive officer, One Hundredth Infantry Battalion (Separate), being duly sworn, depose and say:

"We well remember an accident about the end of 1941 on the Kalanianaʻole Highway below the junction of said road with the Kaneohe cut-off, involving a weapon carrier driven by Pvt. Herbert Kawamoto and a motorcycle driven by Mr. Cox. We did not witness the accident but from eyewitnesses and from an examination of the terrain at the scene of the accident it is our opinion that (a) Kawamoto was traveling too fast to make the curve, which is absolutely blind from either direction; (b) Kawamoto was not an experienced driver, having just recently received his driver's license (known as G. I. license); (c) in no way can we affix any blame on Mr. Cox, who was well on his side of the road.

Kawamoto was in a convoy engaged in a tactical maneuver. The convoy commander, in the leading car, was Lt. Manase Makekau, Two Hundred Ninety-eighth Infantry, who may have been traveling too fast.

We consider 15 to 20 miles per hour about the correct speed to take the curve in question which has always been regarded as one of the most dangerous on a particularly difficult stretch of road."

FARRANT L. TURNER,
*Lieutenant Colonel, Infantry, Commanding, One Hundredth Infantry
Battalion (Separate).*

JAMES W. LOVELL,
*Major, Infantry, Executive Officer, One Hundredth Infantry
Battalion (Separate).*

Sworn to and subscribed before me this 28th day of December 1942.

JOHN M. TANIMURA,
Captain, One Hundredth Infantry Battalion (Separate), Adjutant.

STATE OF MINNESOTA,
County of Scott, ss:

AFFIDAVIT OF HERBERT H. KAWAMOTO

Personally appeared before me, the undersigned authority for administering oaths, one Herbert H. Kawamoto, technician fifth grade (30100296), who deposes and says as follows:

"This statement is to the best of my knowledge. The accident occurred on the said date, January 28, 1942, as stated by Sgt. K. C. Sam. On that morning our mobile-force unit had been called on the alert. I was the driver of the said vehicle on the morning of the alert call. Due to walking on grass my shoes had become slippery. In the afternoon we again had an alert call. I was the said driver of the afore-mentioned vehicle and as I was about to reach the second curve I shifted from third to fourth gear and was proceeding at a rate of speed of approximately 15 to 20 miles per hour. As I was about to round the curve I saw that the

truck was over the center line, and in trying to bring the truck over I tried to jam on the brake but my shoe slipped off and fell on the accelerator. That in turn jerked the truck forward. I saw the motorcycle coming but do not remember how the truck hit their vehicle. The truck crashed into the fence on the road, hit a signpost. Here the truck stopped for awhile, then the rest of the men who were in the truck jumped out while I stayed on the truck and applied the brakes trying to save the truck. But was ordered out of the truck by the men. Soon after I got out of the truck it rolled down the gulch."

HERBERT H. KAWAMOTO,
Technician, Fifth Grade, Camp Savage, Minn.

Subscribed and sworn to in my presence at Camp Savage, Minn., on this 11th day of January, 1943.

JOSEPH E. YOUNG,
Major, Quartermaster Corps, Summary Court.

Q